

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2003-00395**

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PUBLIC SERVICE
COMMISSION

**IN RE THE MATTER OF:
CHARLES T. LATKO, JR. and
LOIS G. LATKO**

COMPLAINANTS

vs.

COMPLAINANTS' CLOSING ARGUMENT

**TAYLOR COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION**

RESPONDENT

Safety. This is the issue that has been addressed by Mr. and Mrs. Latko all through this proceeding. Safety in the manner by which Taylor County Rural Electric Cooperative Corporation (TC) provides electric service to the Latko property at 636 Bradfordsville Road in Mannsville, KY. The Latkos have alleged and shown that the provision of such service has been, and is, "unreasonable, unsafe, insufficient..." KRS 278.260(1).

The very heart of the substance of Complainants' evidence was uncontroverted. TC failed to contradict the fact that personal property belonging to the Latkos was damaged on a number of occasions by reason of the nature of the existing electrical service. TC failed to provide any evidence showing alternate explanations for this unsafe condition.

Included among the uncontroverted testimony were the following events related by the Latkos:

- During a thunderstorm, lightning struck a utility pole and transformer across the street from the Latko property (not the "Creek Pole"). The current surge to their house destroyed a

porch light fixture and bulb while Mr. Latko and a guest physically felt the electric charge.

- In July 2002 the Creek Pole was struck by lightning. The Latkos' yard light was destroyed and required replacement. An outside electrical outlet was destroyed. Two lights in the storm cellar blew out and the sump pump was destroyed. While in the cellar Mr. Latko's watch (he was wearing at the time) was destroyed and he suffered injury when he felt the current. To this day he still feels occasional tingling in his fingers. A "huge mushroom" of electricity was observed to move across the property. It was later found that a bell insulator was either open or missing and a ground wire had not been properly connected to a ground rod at the house.
- On August 4, 2003 lightning struck a tree on the Sam Cox property. Electrical service to the Latkos was interrupted. Their living room light fixture and wiring had to be replaced.
- On August 22, 2003 the Latkos' telephone was destroyed by another electrical storm.
- On September 22, 2003, during a light rainfall, Mrs. Latko observed the Creek Pole giving off "huge sparks" and she heard a humming sound. The humming was so loud its vibrations could be felt through the ground. Electric service once again was interrupted. It was later determined another bell insulator had either broken or was not functioning properly.

Complainants' Exhibits 6 and 6A bear witness to the chronology of repairs and replacements required due to the unsafe provision of electric service. All types of appliances were destroyed while surge protectors proved of little use. TC never disputed this. Nor did TC explain why the area around the base of the Creek Pole was charred and burnt, the ground wire insulation on the pole was and remains chipped and broken, or why bare copper wire remains exposed (Complainants' Exhibits 1 and 2).

It is also undisputed that TC relocated the Creek Pole in 1983 due to “ground erosion at or near the pole” (Direct Testimony of Mike Skaggs). The pole was moved “back away from the branch about six feet” (Direct Testimony of Mike Skaggs). Skaggs stated that in March 2004 the pole was “4 feet from the bank of the branch.” On cross examination he admitted the 4-foot measurement was the distance from the pole to the edge of the grass, and did not take into account that there was some 6-10 inches of ground unsupported beneath by soil. TC agreed this pole will again need to be relocated, but disagreed with Complainants about the timing of such relocation.

Neither of TC’s witnesses were able to determine the actual rate of erosion for the time periods between 1968 and 1983, or 1983 to date. The direct testimony of both Mr. Myers and Mr. Skaggs assumed a constant rate of erosion over time. However, on cross examination, they did not know whether the rate of erosion at any time was constant. As has been shown, this is a creek that floods and at times exceeds its banks whenever there is a heavy rain. This is not a mellow babbling brook with a constant flow rate.

Mrs. Latko testified the water rushes so violently at times it “whirlpools” in the branch immediately in front of the Creek Pole. Despite having reinforced their side of the bank with concrete, much of that reinforcement has washed away with the forces of nature. Whole chunks of rock and soil have been observed to fall out of the bank in dry weather. At the time of the hearing she had measured the distance from the Creek Pole to the edge of the bank (less the overhang) at 34 inches. The Creek had eroded severely over a relatively short period of time.

What has TC offered to counter the Complainants? In his Direct Testimony Barry L. Myers relied on the identification of the wrong property when he “researched the records of [the] cooperative”. Mr. Myers admitted his error at the hearing.

When TC relocated the Creek Pole in 1983 it had the same rights then as it has now over the Sam Cox property. There were no written records evidencing what actions TC took in 1983 to secure any additional rights to relocate the pole. Mr. Skaggs assumed that TC must have acquired oral consent from the property owner for there are no written records. TC moved the pole back within its own easement.

Today, TC refuses to relocate the pole because (1) it was at the request of one of its members for the alleged convenience of that member, and (2) Samuel Cox said “no” to any relocation. When asked what engineering reasons were behind the four “options” generated by TC, Mr. Skaggs replied there were none; the options were generated to try to satisfy the Latkos.

Much was made by both parties about the photographs entered in evidence. These photos showed various angles of the Latko property taken at various times. TC attempted to discredit the Latkos’ photos by showing the location of a group of trees they identified as the “3 sisters” and by showing an individual with outstretched arms on the Latkos’ property. Well, the “3 sisters” did not disappear from the property; they still exist today as shown by TC’s own photos (Respondent’s Exhibits A, C, D & G). Different photographic angles present different, and sometimes, conflicting perspectives of the same subject.

Mrs. Latko testified the individual with outstretched arms was standing **not** where she said she used to be able to drive the tractor, **but** he was standing in the middle of what was once a circular garden next to the house (Complainants’ Exhibits A & A1). Whoops! TC was in the wrong place again. In fact, it was the 18-foot wide area shown on Exhibits A & A1 (where the guy wires now exist) that was the area the Latkos used to drive their tractor and bush hog.

What about the location of the guy wires? TC contended the current location of the wires is the closest those wires have ever been to the Latko house; that the wires exist today as they did just prior to the pole's earlier relocation. Yet the pole was moved in 1983 a distance of six feet *away* from the Latko house. Wouldn't, the guy wires, had they existed at that time, have been closer to the house before the relocation? On the other hand, the Latko witnesses testified the wires did not exist until sometime in the 1990's

TC's credibility comes into question again when their witnesses gave direct testimony that the Latkos had no intention of paying for relocation of the pole and lines. Mrs. Latko testified she made very early inquiries about the cost for doing this. TC ignored her request. The Latkos also approached Sam Cox to try to purchase a strip of property in which the relocation could occur. Mr. Cox refused all offers. Having secured no help from TC they had no recourse but to file this Complaint before the PSC.

The *Taylor County Rural Electric Cooperative Corporation Rules and Regulations*, on file with the PSC, itself, relieves the Latkos of financial liability if such a relocation is "beneficial to the cooperative". What could be more beneficial to TC than relocating the pole and lines, and providing service in a manner that is safe and reasonable for its customers/members? Had the Latkos made such a request for their own reasons of aesthetics or utility, then it is reasonable to have required them to pay for this. However, they made the request based on their own safety. A financial hardship should not be imposed on an injured party who seeks to be supplied electricity in a safe and reasonable manner. Moreover, should the PSC now order remedial measures, including relocation of the pole, lines and guy-wires, such would constitute an Order from a governing body, and not a request by the Latkos. Finally, the same *Rules and Regulations* make clear such financial burden is not placed on

the requesting or injured party. If an agency-requested relocation “for any reason” occurs, there is no imposition of costs on any Co-op member.

TC pleads that it cannot exercise its powers of eminent domain. However, KRS 279.110(4) states that any rural electric cooperative formed under KRS Chapter 279 may:

“Have and exercise the right of eminent domain in the manner provided in the Eminent Domain Act of Kentucky.”

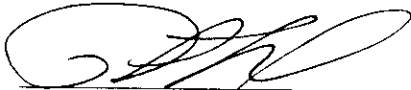
In the event TC cannot reach agreement with Sam Cox over relocation of the pole, lines and guy wires, it is authorized to exercise the condemnation powers it possesses. KRS 416.550. TC admitted it will have to move the Creek Pole in the future and when that occurs, it will either have to secure the permission of Sam Cox or pursue its powers of eminent domain. If this power is available in the future, it is certainly available in the present.

TC took much time at the hearing to determine the interest the Latkos had in the subject property. Whether Charles and Lois Latko were life tenants or joint tenants in fee simple, makes no difference. A life tenant possesses the right to sue and recover for injury sustained to the estate. Furthermore, Lois Latko, as a member of TCRECC, paid for and received electrical service from TC and thus was entitled to bring this Complaint. Finally, when the Legislature grants the right of filing a Complaint to “any person” (KRS 278.260), such grant has been interpreted at both the administrative and judicial levels to mean just what it says: *any* person; it is not restricted to a licensee, customer, consumer, or land owner.

How much more damage to property and person must be endured by the Latkos before TC believes there is a viable safety concern? Who will be hurt before corrective action is taken? The Latkos are entitled to the relief they have requested, due to the unsafe conditions that exist and the

unsafe history they have lived through. Such relief should be granted and at no additional cost to the Complainants.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on May 14, 2004 the original and 8 copies of the above and foregoing was filed with the Kentucky Public Service Commission, and that a separate copy was mailed this same day to:

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